

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
UNITED STATES OF AMERICA

- against -

JOHN MATERA, *et al.*

02-CR-743 (JMJ)

DECLARATION

Defendants.
-----X

Seth Ginsberg, attorney for defendant John Matera, hereby declares as follows:

1. I submit this declaration in support of Matera's Emergency Application for a reduction of sentence and release from custody, pursuant to 18 U.S.C. § 3582; 28 U.S.C. §§ 2241 and 2255.

2. The factual assertions set forth in the accompanying memorandum of law are provided in good faith based upon personal knowledge, information obtained from public sources, communications from Matera to counsel via email, and communications from Matera to members of his family via email and telephone that were related to counsel.

3. Given the high stakes of the matter at hand, I have no reason to doubt the accuracy of any of the information provided to me for inclusion in the accompanying memorandum and have made good faith efforts to verify as much information as possible, though, in most instances, verification has not been possible.

4. In addition to the instant application, on April 2, 2020, having learned from Matera and from his family that he was suffering from the symptoms of COVID-19, I attempted to contact FCI Danbury via telephone and email in an effort to obtain information about the medical status of John Matera and was informed that my concerns would be forwarded to the appropriate personnel.

5. On April 4, 2020, having received no further communication from FCI Danbury and having learned from Matera's family that he tested positive for COVID-19, I sent a letter to the Warden of FCI Danbury via email and fax seeking Matera's release pursuant to the memoranda issued by the Attorney General and pursuant to 18 U.S.C. § 3582. Exhibit A, Letter from Seth Ginsberg, Esq. to Warden, FCI Danbury, dated April 4, 2020.

6. I am aware that the April 4, 2020 letter application was received, because, on April 6, 2020, I received the following response:

The Bureau of Prisons (BOP) is carefully monitoring the spread of the COVID-19 virus. As with any type of emergency situation, we carefully assess how to best ensure the safety of staff, inmates and the public. FCI Danbury is implementing the Bureau of Prisons' guidance on mitigating the spread of COVID-19. That guidance can be found at www.bop.gov. The current plan continues to allow for inmate transfer to pre-release custody. As they near their release, all inmates are reviewed on an individual basis to determine their eligibility for a period of pre-release confinement, including placement on home confinement. Please note with one exception for elderly offenders, home confinement eligibility is limited to 6 months or 10% of an inmate's sentence, whichever is shorter.

We are in receipt of Attorney General Barr's memo regarding Prioritization of Home Confinement as Appropriate in Response to COVID-19 Pandemic, and will be working to ensure we utilize home confinement, consistent with the memo, to protect the health and safety of BOP staff and inmates in our custody.

Exhibit B, Email from Executive Assistance, Federal Correctional Institution Danbury CT, to Seth Ginsberg, Esq., dated April 6, 2020.

7. Notably, the email response fails to acknowledge the authority granted to the Bureau of Prisons, and to FCI Danbury in particular, in the Memorandum from the Attorney General to the Director of the Bureau of Prisons, regarding "Increasing Use of Home Confinement at Institutions Most Affected by COVID-19," dated April 3, 2020 (the 4/3/20 Barr Memo").

8. In light of Matera's serious health condition, it was determined that the instant application is necessary to protect Matera's health and ensure his survival.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: New York, New York
April 6, 2020

Respectfully Submitted,

/s/

SETH GINSBERG
Attorney at Law
299 Broadway, Suite 1405
New York, New York 10007
917-885-3375
srginsberg@mac.com

Attorney for John Matera